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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD R. JONES

Appeal 2009-006796
Application 10/715,056
Technology Center 3700

Decided: March 11, 2010

Before WILLIAM F. PATE, III, LINDA E. HORNER, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Donald R. Jones (Appellant) seeks our review under 35 U.S.C. § 134 of the rejection of claims 1-5, 8-16, 18 and 19, which are all of the pending claims. Claims 6, 7, 17, 20 and 21 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

Appellant's claimed invention is directed to an easily movable, automatic tee-up device for golfers (Spec. 1:20-21; Spec. 3:8-11).

Claims 1 and 15, reproduced below, are representative of the subject matter on appeal.

1. An automatic tee-up device, comprising:
 - a golf ball reservoir;
 - a platform with a groove for a golf ball to travel from the reservoir to a tee, with the tee movable from below a level of the golf ball in the groove to above the level of the golf ball in the groove;
 - a ball ejector disposed to eject golf balls one at a time from the reservoir onto the groove; and
 - a lever that projects from the platform and that actuates the ball ejector and the tee;
 - wherein after the golf ball is ejected by the ejector, the golf ball travels on the groove to the tee and is raised by the tee into a position suitable for striking with a golf club;
 - wherein the ball ejector and the tee are actuated by moving an end of the lever in a horizontal arc; and
 - wherein the lever is disposed to be actuated by a head of the golf club.
15. A method of using an automatic tee-up device, comprising the steps of:
 - actuating a lever to cause a ball ejector to eject golf balls one at a time from a golf ball reservoir onto a platform with a groove for a golf ball to travel from the reservoir to a tee; and

actuating the lever to cause the tee to raise the golf ball, with the tee movable from below a level of the golf ball in the groove to above the level of the golf ball in the groove;

wherein after the golf ball is ejected by the ejector, the golf ball travels on the groove to the tee and is raised by the tee into a position suitable for striking with a golf club; and

wherein an end of the lever is actuated by being moved in a horizontal arc and is disposed to be actuated by a head of the golf club.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Koett	US 3,693,979	Sep. 26, 1972
Adam	US 4,741,537	May 3, 1988
Lai	US 4,779,796	Oct. 25, 1988
Chang	US 5,529,307	Jun. 25, 1996
Tarbox	US 5,647,805	Jul. 15, 1997
Eckardt	US 2003/0162598 A1	Aug. 28, 2003

The following rejections by the Examiner are before us for review:

1. Claims 1-4 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Adam in view of Tarbox.
2. Claims 5 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Adam in view of Tarbox, and further in view of Chang.

3. Claims 8-10¹, 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Adam in view of Tarbox, and further in view of Eckardt.
4. Claims 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Adam in view of Tarbox, and further in view of Lai.
5. Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Adam in view of Tarbox and Lai, and further in view of Koett.

ISSUE

The issue before us is whether the Examiner erred in finding that the combined teachings of Adam and Tarbox, or, in the alternative, the teachings of Adam alone would have led a person having ordinary skill in the art to a lever that actuates both a ball ejector and a tee as called for in independent claims 1 and 15 (App. Br. 7, 11, 14).

ANALYSIS

Regarding claims 1-4 and 15: Appellant contends that the combined teachings of Adam and Tarbox, or, in the alternative, the teachings of Adam alone would not have led a person having ordinary skill in the art to a lever that actuates both a ball ejector and a tee as called for in independent claims 1 and 15 (App. Br. 7, 11, 14).

¹ The dependency of claim 10 was amended from canceled claim 6 to pending claim 1 in an amendment filed January 28, 2008, which was noted as being entered in a communication mailed February 6, 2008.

The Examiner found that “Adam also discloses a lever . . . that projects from the platform and that actuates the ball ejector and the tee via a head of a golf club . . .” (Ans. 4).

Claims 1 and 15 call for, *inter alia*, a lever that actuates both a ball ejector and a tee.

Adam describes:

If the practicing golfer wishes to release a ball to be teed up, he merely uses the head of his club to depress the padded portion 40 of the pedal bar [lever] 39. As may be readily seen in FIGS. 3-6, depression of the padded portion 40 . . . rotates the rocking arm 37 . . . out of the path of balls issuing from the outlet of the flexible tubing 10 . . . With the ball path thus unblocked, a single ball exits the tubing 10 . . .” (col. 6, ll. 31-43).

We find that in Adam, the depression of the padded portion 40 of the pedal bar [lever] 39 causes the ball to eject, that is, actuates a ball ejector.

Adam further describes:

As shown in FIGS. 8 and 9, when a ball comes to rest within mat depression 62, it seals the tee orifice 89 and prevents the passage of air from the supply 74 therethrough. When this happens, positive pressure from the supply 74, unable to escape, begins to fill the deflated chamber 76 formed by the base 78, the upper chamber portion 84, and the membrane 87. As the chamber fills and expands, the unconfined upper portion 84 rises to the position shown in FIG. 9 and causes the tee 88 to lift the ball to its teed height above the mat.” (col. 6, l. 65-col. 7, l. 6).

We find that in Adam that the ball coming to rest within the mat depression 62 seals the orifice 89 and causes the tee 88 to rise. Thus, we find in Adam that the pedal bar [lever] 39 does not actuate the tee 88.

Therefore, we find that Adam does not describe a lever that actuates both a ball ejector and a tee as called for in independent claims 1 and 15.

The Examiner has not relied on Tarbox for any teaching that would remedy the deficiency in Adam (Ans. 4-5).

We conclude that Appellant has demonstrated that the Examiner erred in rejecting independent claims 1 and 15 over Adam in view of Tarbox. Appellant has likewise demonstrated error in the Examiner's rejection of claims 2-4, which depend from independent claim 1.

Regarding claims 5, 8-14, 16, 18 and 19: The Examiner has not relied on Chang, Eckardt, Lai or Koett for any teaching that would remedy the deficiency in Adam (Ans. 5, 6, 8, and 9). We thus conclude that the Examiner also erred in rejecting claims 5 and 16 over Adam, Tarbox and Chang; claims 8-10, 18 and 19 over Adam, Tarbox and Eckardt; claims 11-13 over Adam, Tarbox and Lai; and claim 14 over Adam, Tarbox and Koett.

CONCLUSION

The Examiner has erred in finding that the combined teachings of Adam and Tarbox, or, in the alternative, the teachings of Adam alone would have led a person having ordinary skill in the art to a lever that actuates both a ball ejector and a tee as called for in independent claims 1 and 15.

DECISION

The decision of the Examiner to reject claims 1-5, 8-16, 18 and 19 is reversed.

REVERSED

Klh

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